IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA:

CWP.No.1493/2002.

Date of Decision :3.4.2007.

Vishal Thapa. …Petitioner.

Versus:

Union of India and others. …Respondents.

Coram:

The Hon'ble Mr.Justice Sanjay Karol, Judge.

Whether approved for reporting?[1]

For the petitioner: Mr.Sanjay Dutt Vasudeva, Advocate.

For Respondents. Mr.Sandeep Sharma, Assistant Solicitor General.

Sanjay Karol,J (Oral).

Petitioner was enrolled in 11 Gorkha Rifles on 30th January, 1994. After completion of his training, he was posted to 3/11 Gorkha Rifles (Arunachal Pradesh) on 27th November, 1995. Immediately thereafter he was diagnosed with Central Nervous System (Investigation) (Generalized Tonic Seizure). After having been medically examined from time to time, he was declared unfit and discharged from service w.e.f. 31st March, 2001 in terms of Clause 13(3) items 3 (v) of the Army Rules. All benefits other than disability pension have been duly paid and acknowledged by him.

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[1] **Whether reporters of Local Papers may be allowed to see the judgment?**

By means of present writ petition, the petitioner has assailed the order whereby petitioner's entitlement for disability pension has been rejected on the ground that the disease is not attributable to military service as also that the disease is constitutional in nature and not related to job.

In the reply filed by the respondents, a specific objection has been taken that he is entitled to prefer an appeal against the said order of rejection. Ordinarily, I would have ignored his objection since the matter is posted for final hearing after a period of 4 ½ years. However, in view of the stand of the respondents that there are contentious disputed questions of fact involved in the peculiar facts and circumstances, it is directed that the petitioner may prefer an appeal before an appropriate authority. The learned counsel for the petitioner is in agreement with the same. The learned counsel for the petitioner submits that his client shall file an appeal within a period of six weeks from today. Limitation in filing the appeal shall not come in the way of the petitioner. The respondents are directed to consider his appeal in accordance with law within a period of eight weeks from the date of the receipt of the petitioner's appeal. Needless to say that it will be open for the parties to raise all such pleas and contentions as may be available to them in accordance with law. The writ petition stands disposed of accordingly.

(Sanjay Karol),
Judge.

April 3, 2007(R)